Supreme Court, U.S.
FILED
FEB 18 2003
OFFICE OF THE CLERK

Nos. 02-241 and 02-516

In the Supreme Court of the United States

BARBARA GRUTTER, *Petitioner,*

and

JENNIFER GRATZ AND PATRICK HAMACHER, *Petitioners,*

v.

LEE BOLLINGER, *et al., Respondents.*

On Writs of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF GENERAL MOTORS CORPORATION AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

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BRIEF OF GENERAL MOTORS CORPORATION AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

INTEREST OF AMICUS CURIAE

General Motors Corporation ("General Motors") is a multi-national corporation headquartered in Detroit, Michigan.[1] A global leader in automobile design and manufacturing, financial services, and advanced technology electronics, General Motors contributes substantially to the national and world economies, with annual revenues exceeding $175 billion. General Motors employs 388,000 people globally, including 193,000 people in the United States.

General Motors' interest in this case is substantial. General Motors employs a large number of graduates from the University of Michigan.[2] General Motors depends upon the University of Michigan and similarly selective academic institutions to prepare students for employment — to teach them the skills required to succeed and lead in the global marketplace. The quality of the education these students receive profoundly affects the ability of General Motors, and indeed all major American corporations, to compete.

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[1] Pursuant to Rule 37.3(a) of the Rules of the Court, the parties have lodged letters consenting generally to the filing of briefs of amici curiae. Pursuant to Rule 37.6, amicus affirms that no counsel for a party authored this brief in whole or in part and that no person other than amicus and its counsel made a monetary contribution to its preparation or submission.

[2] In part because General Motors hires so many graduates from the University of Michigan, the University is one of General Motors' "Key Institutions," to which the company provides significant financial assistance.

SUMMARY OF ARGUMENT

General Motors files as amicus curiae in this case to explain that the Nation's interest in safeguarding the freedom of academic institutions to select racially and ethnically diverse student bodies is indeed compelling: the future of American business and, in some measure, of the American economy depends upon it.

In General Motors' experience, only a well educated, diverse work force, comprising people who have learned to work productively and creatively with individuals from a multitude of races and ethnic, religious, and cultural backgrounds, can maintain America's competitiveness in the increasingly diverse and interconnected world economy. Diversity in academic institutions is essential to teaching students the human relations and analytic skills they need to succeed and lead in the work environments of the twenty-first century. These skills include the abilities to work well with colleagues and subordinates from diverse backgrounds; to view issues from multiple perspectives; and to anticipate and to respond with sensitivity to the cultural differences of highly diverse customers, colleagues, employees, and global business partners.

General Motors speaks from first-hand experience regarding the importance of such cross-cultural skills. As General Motors' global enterprises expand, it is increasingly critical that employees at every level of its operations utilize these skills in their daily tasks. General Motors now maintains major market presences in more than 200 different countries on six continents. General Motors' employees, customers, and business partners thus could scarcely be more racially, ethnically, and culturally diverse.

A ruling proscribing the consideration of race and ethnicity in admissions decisions likely would dramatically reduce diversity at our Nation's top institutions and thereby deprive the students who will become the corps of our

Nation's business elite of the interracial and multicultural interactions in an academic setting that are so integral to their acquisition of cross-cultural skills. Such a ruling also likely would reduce racial and ethnic diversity in the pool of employment candidates from which the Nation's businesses can draw their future leaders, impeding businesses' own efforts to obtain the manifold benefits of diversity in the managerial levels of their work forces. Each of these results may diminish the ability of American businesses to utilize fully the opportunities of the global market.

ARGUMENT

The ability of American businesses to thrive in the twenty-first century will depend in large measure on our Nation's responses to two inevitable forces: the increasingly global and interconnected nature of the world economy (see, *e.g.*, T.K. BIKSON & S.A. LAW, RAND REPORT ON GLOBAL PREPAREDNESS AND HUMAN RESOURCES: COLLEGE AND CORPORATE PERSPECTIVES (1994) ("RAND REPORT")) and the increasing diversity of our own population (see, *e.g.*, MINORITY BUSINESS DEVELOPMENT AGENCY, U.S. DEP'T OF COMMERCE, DYNAMIC DIVERSITY: PROJECTED CHANGES IN U.S. RACE AND ETHNIC COMPOSITION 1995 TO 2050 (1999) ("DYNAMIC DIVERSITY")). The vast majority of businesses in the Fortune 500 currently maintain operations or do business in countries outside of the United States. Technological innovations, including the internet and other telecommunications tools, are creating a truly global, interlinked world economy. See RAND REPORT, *supra*, at 1-2. Global mergers and business expansion are continually increasing the diversity of American businesses' customer bases and business partners.

Nationally, our own population is also becoming increasingly diverse: by the year 2050, almost half of all Americans — 47% — will be African American, Hispanic, Asian American, or Native American. See DYNAMIC

DIVERSITY, *supra*, at 8. After 2050, that "minority" population is projected rapidly to surpass the non-Hispanic white population in size. *Id.* at 11; see also *id.* at 1.

To succeed in this increasingly diverse environment, American businesses must select leaders who possess cross-cultural competence — the capacities to interact with and to understand the experiences of, and multiplicity of perspectives held by, persons of different races, ethnicities, and cultural histories. Numerous authorities concur that "[c]rosscultural competence" is "the most important new attribute for future effective performance in a global marketplace." RAND REPORT, *supra*, at 51; see also *id.* at 24 (identifying "crosscultural competence" as "the *critical new human resource requirement* for corporations that have espoused a global business strategy") (emphasis in original). Thus, it is essential that the selective academic institutions that prepare students to enter the business and professional worlds adequately equip them with this skill. *Id.* at 51-52.

Much research confirms what is intuitively obvious: students are likely to acquire greater cross-cultural competence in a multicultural and multiracial academic environment, in which students and faculty of different cultures and races interact, than they are in a homogeneous one, in which cross-cultural communication is merely a theoretical construct. See pp. 17-18, *infra*.

The Court is presented with the question whether state universities have a compelling interest in ensuring that students receive these educational benefits. The answer to that question, originally provided by Justice Powell's opinion in *Regents of University of California v. Bakke*, 438 U.S. 265 (1978), and confirmed by the experience of the business community and academic institutions in the decades since *Bakke* was decided, is a resounding "yes," as the Sixth Circuit, sitting en banc, correctly concluded. *Grutter v. Bollinger*, 288 F.3d 732, 742 (6th Cir. 2002) (en banc); see

also *Gratz v. Bollinger*, 122 F. Supp.2d 811, 820 (E.D. Mich. 2000).[3]

I. CONSIDERATION OF RACE AND ETHNICITY IN UNIVERSITY ADMISSIONS FURTHERS A COMPELLING INTEREST IN EDUCATING STUDENTS AND TRAINING THEM TO COMPETE IN THE GLOBAL MARKETPLACE

A. Institutions Of Higher Education Have A Compelling Interest In Selecting Diverse Student Bodies

Justice Powell presciently declared in *Bakke* that "the 'nation's future depends upon leaders trained through wide exposure' to the ideas and mores of students as diverse as this Nation of many peoples." 438 U.S. at 313 (quoting *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967)). A majority of the Court held in *Bakke* that the University of California had "a substantial interest that legitimately may be served by a properly devised admissions program involving the competitive consideration of race and ethnic origin." *Id.* at 320 (opinion of Powell, J., joined by Brennan, White, Marshall, and Blackmun, JJ.). In his opinion, Justice Powell explained that "attainment of a [racially and ethnically] diverse student body * * * clearly is a constitutionally permissible goal for an institution of higher education" (*id.* at 311-312) because it augments the educational process in two ways.

First, racial and ethnic diversity in an academic institution teaches students skills that will improve their performance as leaders and professionals in a heterogeneous

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[3] We leave to the parties, who possess greater familiarity with the details of the University's program, the question whether the program is narrowly tailored to achieve the above-described compelling interest.

society. 438 U.S. at 313. Immersion in a multiracial academic environment enhances students' knowledge of different cultures and their understanding of perspectives that are influenced by race. That augmented understanding in turn prepares students, upon graduation, to work cooperatively in multiracial environments and to serve multiracial clienteles. As Justice Powell observed, for example, racial diversity in a medical school "enrich[es] the training of its student body[,] * * * better equip[ping] its graduates to render with understanding their vital service" to a "heterogeneous population." *Id.* at 314.

Second, racial and ethnic diversity promotes "'speculation, experiment, and creation,'" thinking processes that are "essential to the quality of higher education." 438 U.S. at 312 (quoting *Sweezy v. New Hampshire*, 354 U.S. 234, 263 (1957) (Frankfurter, J., concurring)). Differences among students allow them to "'stimulate one another to reexamine even their most deeply held assumptions about themselves and their world,'" teaching them to view issues from myriad perspectives. *Id.* at 312 & n.48 (quoting William G. Bowen, *Admissions and the Relevance of Race*, PRINCETON ALUMNI WEEKLY 7, 9 (Sept. 26, 1977)).

The en banc Sixth Circuit concluded that Justice Powell's opinion in *Bakke* is controlling.[4] Its decision that diversity is

[4] Petitioners and amici assert that this aspect of the *Bakke* opinion is not controlling because only Justice Powell's opinion held that an interest in fostering diverse student bodies is compelling. *E.g.*, Grutter Brief at 26-27 (Jan. 16, 2003); Gratz Brief at 31-32 (Jan. 16, 2003); Cato Inst. Brief at 15 (Jan. 16, 2003); Nat'l Ass'n of Scholars Brief (Grutter) at 16-17 (Jan. 15, 2003). Because Justice Powell's holding that diversity is a compelling state interest is the narrowest ground offered in support of the *Bakke* judgment, it is controlling. In any case, as the Sixth Circuit noted, Justice Brennan's opinion contains implicit support for Justice Powell's "diversity conclusion." *Grutter*, 288 F.3d at 742.

a compelling interest is supported by a mass of unrefuted evidence presented in the trial courts below, substantiating both of Justice Powell's statements regarding the ways in which racial and ethnic diversity enhance students' intellectual and social growth. Reviewing this evidence, Judge Duggan found that the University had presented "solid evidence regarding the educational benefits that flow from a racially and ethnically diverse student body" and, guided by Justice Powell's opinion, concluded that the University's interest in achieving these benefits is compelling. *Gratz*, 122 F. Supp.2d at 822, 824.

Petitioners and their amici[5] attack the Sixth Circuit's holding, arguing that the contention that racial diversity among students enhances educational diversity "reflect[s] * * * racial stereotyping about how people will (or should) think or behave on account of their skin color or ethnicity." Cato Inst. Brief at 3 (Jan. 16, 2003). But in *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547 (1990), the Court explicitly endorsed Justice Powell's view that racial diversity tends to promote a healthy and educational diversity of viewpoints. The Court explained: "[t]he predictive judgment about the overall result of minority" representation "is not a rigid assumption about how minorit[ies] * * * will behave in every case but rather" merely recognizes "that greater admission of minorities would contribute, on average, 'to the robust exchange of ideas.'" *Id.* at 579 (quoting *Bakke*, 438 U.S. at 313).[6]

[5] *E.g.*, Grutter Brief at 34-35; Gratz Brief at 29-30; Ctr. For New Black Leadership Brief at 3-4 (Jan. 15, 2003); Nat'l Ass'n of Scholars Brief (Grutter) at 12-13; Pac. Legal Found. Brief (Grutter) at 16-18 (Jan. 14, 2003); W. Connerly Brief at 23-24 (Jan. 16, 2003).

[6] In *Adarand Constructors, Inc.* v. *Pena*, 515 U.S. 200, 225-227 (1995), the Court overruled *Metro Broadcasting* on a different ground — specifically, that a race-conscious federal government

That conclusion is plainly correct. Although persons of a particular race or ethnicity of course do not necessarily share a common perspective, race and ethnicity are as likely as any other experience to influence an individual's own, unique perspective. Just as growing up in a particular region, living with a disability, or having particular professional experiences are likely to affect an individual's views, so too is one's experience of being a member of a racial minority in a society, like ours, in which, unfortunately, race still matters. See WILLIAM G. BOWEN & DEREK BOK, THE SHAPE OF THE RIVER 278-279 (1998).

Numerous amici and Judge Boggs in his dissent all acknowledge that admitting students with diverse experiences is a valid academic goal because diverse experiences lead to divergent world views, which in turn enhance the quality of debate and promote learning among students. But they contend that pursuing "true experiential diversity" without direct reference to race would equally accomplish this goal. *Grutter*, 288 F.3d at 791-792 (Boggs, J., dissenting); see also, *e.g.*, Cato Inst. Brief at 3-4; Ctr. for Equal Opportunity Brief at 19-20 (Jan. 16, 2003); Ctr. for New Black Leadership Brief at 3-5 (Jan. 15, 2003); Law Professors Brief at 13 (Jan. 16, 2003); Mich. Ass'n of Scholars Brief at 14 (Jan. 16, 2003); United States Brief (Grutter) at 8 (Jan. 16, 2003); United States Brief (Gratz) at 10-11 (Jan. 16, 2003); cf. Grutter Brief at 44; Gratz Brief at 13, 17. Petitioners and amici ignore, however, that the mere fact of being a member of a racial or ethnic minority in this society — standing alone — is *itself* an experience that creates unique perspectives. As Judge Clay explained in his concurrence, an individual can only experience racial or

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program need only be reviewed under intermediate, rather than strict, scrutiny. The Court in *Adarand* did not revisit its holding in *Metro Broadcasting* that racial and ethnic diversity tends to promote a diversity of viewpoints.

ethnic discrimination *based on his or her race or ethnicity*; and endeavoring to include in a law school class individuals who have actually experienced the kind of racial or ethnic discrimination being discussed in class requires consideration of race in admissions. *Grutter*, 288 F.3d at 764-765 (Clay, J., concurring). Indeed, Judge Boggs acknowledged as much in his dissent. *Id.* at 791 (Boggs, J., dissenting) (stating that the minorities who are admitted "all, *on average*, have had some experience with being the object of racial discrimination" and that "[f]or law students, this might bring an understanding of the purposes behind the antidiscrimination laws that they might study") (emphasis in original). Thus, it is no answer, as Judge Boggs suggests, to favor in admissions students who attended "an under-funded public school, struggl[ed] with relative poverty, [or spent] a childhood * * * in urban rather than suburban areas" (*id.* (Boggs, J., dissenting)); these are insufficient proxies for the experience of being a member of a racial or ethnic minority in America, regardless of class or income. See *id.* at 764-765 (Clay, J., concurring).[7]

Several amici contend that exposure to a broad reading list and to popular culture's purportedly "ubiquitous" message of tolerance are alternative means of achieving the educational effects of diversity. See, *e.g.*, Ctr. for Equal Opportunity Brief at 20-21 (arguing that "the educational effects of random interracial conversations" can be gained, *inter alia*, from reading works by under-represented minorities or from popular culture); Law Professors Brief at 14 (arguing that "surely a sufficiently diverse r*eading list*

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[7] See also Gary Orfield, *Introduction*, *in* DIVERSITY CHALLENGED: EVIDENCE ON THE IMPACT OF AFFIRMATIVE ACTION 26 (Gary Orfield ed., 2001) ("DIVERSITY CHALLENGED") ("[M]any racial problems have a serious impact on people who are not poor. * * * Middle-class blacks are actually more likely to perceive discrimination in their lives than are poor blacks, perhaps because they have more interaction with the white world.").

would suffice" to instill lessons learned by interaction with minority students) (emphasis in original); Nat'l Ass'n of Scholars Brief (Gratz) at 17-18 (arguing that "[s]tudents can listen to 'multiple perspectives' and learn to be considerate of others with or without a racially diverse student body"). But it is self-evident that requiring students to read works authored by under-represented minorities, or having them watch a movie about "the black experience" — without actually interacting with people of color — is grossly insufficient to expand the limited world views created by lifetimes spent in a largely segregated world. See pp. 19-21, *infra*. If the goal is to expand students' understanding of and ability to function in society as it now exists, actual interaction with *peers* of different races is far superior to merely reading or watching a movie about racial issues. For example, a student could too easily dismiss Martin Luther King's writings as reflecting a different, less-enlightened time; that same student would have a harder time dismissing the struggles of her classmates with race and identity issues on campus.

Importantly, it is not only in class discussions that these crucial interactions occur. As Justice Powell noted, quoting the comments of the then-president of Princeton University: "'[A] great deal of learning occurs informally * * * through interactions among students * * * of different races * * * who are able, directly or indirectly, to learn from their differences. * * * For many [students] * * * , the unplanned casual encounters with roommates, fellow sufferers in organic chemistry class, student workers in the library, teammates on a basketball squad, or other participants in class affairs or student government can be subtle and yet powerful sources of improved understanding and personal growth.'" *Bakke*, 438 U.S. at 313 n.48 (quoting Bowen, *Admissions and the Relevance of Race*, *supra*, at 7, 9).

Petitioners' suggestion (Grutter Brief at 16-17, 22; Gratz Brief at 13) that the Sixth Circuit's holding lacks support in this Court's precedents, save for Justice Powell's opinion in *Bakke*, also misses the mark. The Court often has recognized that racial and ethnic academic diversity promotes vital educational goals, and that achieving diversity through race-conscious decisionmaking accordingly is within the prerogative of state educational institutions. In *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), for example, the Court observed that, even absent any constitutional violation, it would be "within the broad discretionary powers of [elementary and secondary] school authorities" to "conclude" as an "educational policy * * * that in order to prepare students to live in a pluralistic society each school should have a prescribed ratio of Negro to white students." *Id.* at 16; accord *North Carolina Bd. of Educ. v. Swann*, 402 U.S. 43, 45-46 (1971). Similarly, in *Washington v. Seattle School District No. 1*, 458 U.S. 457, 460, 472-474 (1982), the Court struck down a measure that would have restricted a school district's power to address *de facto* segregation for the purpose of augmenting education. In the course of its opinion, the Court noted that "it should be * * * clear that white as well as Negro children benefit from exposure to ethnic and racial diversity in the classroom." *Id.* at 472 (internal quotation marks omitted). And it concluded that, "in the absence of a constitutional violation, the desirability and efficacy of school desegregation are matters to be resolved through the political process." *Id.* at 474; cf. *Sweatt v. Painter*, 339 U.S. 629, 634 (1950) (recognizing the educational value of diversity in ordering the desegregation of a law school).

As shown below, the experience of the business world confirms Justice Powell's and the Sixth Circuit's conclusion that state academic institutions have a compelling interest in using diversity to hone young minds and to "prepar[e] * * * children [to act as] citizens[ ]" (*Seattle Sch. Dist.*, 458 U.S. at

473 (internal quotation marks omitted)), leaders (*Keyishian*, 385 U.S. at 603), and professionals (*Brown v. Board of Educ.*, 347 U.S. 483, 493 (1954); *Sweatt*, 339 U.S. 634) in our increasingly heterogeneous society. *Bakke*, 438 U.S. at 313.

B. Success In Today's Business World Demands Cross-Cultural Competence And The Ability To View Problems From Multiple Perspectives — Skills Best Learned In Diverse Academic Environments

The business world has learned that, just as Justice Powell observed, "the nation's future does indeed depend [ ] upon leaders trained" in diverse academic environments. *Bakke*, 438 U.S. at 313 (opinion of Powell, J.) (internal quotation marks omitted). The capacities to work easily with persons of other races and to view problems from multiple perspectives are essential skills in the business world of the twenty-first century. Indeed, the cross-cultural competence of a business' work force directly affects its bottom line. Academic institutions with diverse student bodies offer the best — and for many students, the only — opportunity to acquire these crucial skills.

1. *To Achieve Excellence In The New, Diverse Global Economy, Employees Of Any Race, Culture, Or Ethnicity Must Possess Cross-Cultural Competence*

Demographic changes in the racial and ethnic composition of business work forces, customer bases, and pools of potential business partners increasingly necessitate that entrants into the managerial levels of the business world come equipped with the abilities to work creatively with persons of any race, ethnicity, or culture and to understand views influenced by those traits. See, *e.g.*, RAND REPORT, *supra*, at 16-18, 24-27. Such cross-cultural competence affects a business' performance of virtually all of its major

tasks: (a) identifying and satisfying the needs of diverse customers; (b) recruiting and retaining a diverse work force, and inspiring that work force to work together to develop and implement innovative ideas; and (c) forming and fostering productive working relationships with business partners and subsidiaries around the globe.[8]

Creating and Selling Products to a Diverse Population. Racial minorities in the United States presently wield an impressive *$600 billion* in annual purchasing power (Expert Report of William G. Bowen, at 14 (Dec. 9, 1998)) — a number that is increasing exponentially with expanding minority populations. Moreover, with the global expansion of many businesses and the advent of internet shopping, the customer bases of many businesses now include people from many races and diverse cultures around the world.

Having high-level employees who possess cross-cultural competence is essential for a business to profit from these vast market opportunities. It is undeniable that consumers' cultures can and often do influence their purchasing preferences.[9] Businesses whose employees are able to

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[8] In light of the importance of diversity to a business' success, it is not surprising that many businesses have long promoted a commitment to diversity among their ranks. General Motors, for instance, made diversity a "core business objective" in 1995.

[9] See, *e.g.*, Taylor H. Cox, Jr. & Stacy Blake, *Managing Cultural Diversity: Implications for Organizational Competitiveness*, 5 ACADEMY OF MANAGEMENT EXECUTIVE No. 3, at 45, 49 (1991); David K. Tse *et al.*, *Does Culture Matter? A Cross-Cultural Study of Executives' Choice, Decisiveness, and Risk Adjustment in International Marketing*, 52 JOURNAL OF MARKETING No. 4, at 81-95 (Oct. 1988); Rohit Deshpande *et al.*, *The Intensity of Ethnic Affiliation: A Study of the Sociology of Hispanic Consumption*, 13 JOURNAL OF CONSUMER RESEARCH No. 2, at 214-220 (Sept. 1986); S.G. Redding, *Cultural Effects on the Marketing Process in Southeast Asia*, 24 JOURNAL OF THE MARKET RESEARCH SOC'Y No. 2, at 98-114 (1982).

identify and cater to these market preferences will prosper; those whose employees lack the sensitivity and domain knowledge to meet these diverse market demands will not.

To meet the challenge, businesses require managers and employees who understand that people from diverse backgrounds manifest diverse interests and who know how to translate that understanding into creative product development, community outreach, and marketing and advertising campaigns. Examples of such successful identification and satisfaction of the needs of culturally diverse populations abound. See, *e.g.*, TAYLOR H. COX, JR., CULTURAL DIVERSITY IN ORGANIZATIONS: THEORY, RESEARCH, AND PRACTICE 30-31 (1993) (citing, among other examples, a company's successful development of a cosmetics line designed for women of color and another company's success in turning around poor performance in inner cities by assigning management of those market areas to black and Hispanic managers sensitive to local consumer preferences).

Companies whose managers understand the importance of forging relationships with diverse communities similarly enhance their business opportunities. Author John Fernandez cites as one example General Motors' closure of a $1 billion automotive deal with China. The deal was aided by China's appreciation of the corporation's prior outreach efforts to Asian-American employees and the Asian-American community. JOHN P. FERNANDEZ, RACE, GENDER AND RHETORIC: THE TRUE STATE OF RACE AND GENDER RELATIONS IN CORPORATE AMERICA 224 (1999). Conversely, a business' lack of sensitivity to culturally based beliefs may disaffect an entire target market and result in decreased sales. Many of the best examples of this phenomenon have occurred in the global market, when American companies have failed to develop sufficient familiarity with the cultures of potential customers to avoid

offending them. See *id.* at 220-221 (enumerating notable mishaps and obstacles).

Relationships in the Workplace. In the year 2000, more than one-third of all new labor force entrants in the United States were minorities. See Expert Report of Bowen, at 5; see also FEDERAL GLASS CEILING COMM'N, A SOLID INVESTMENT: MAKING FULL USE OF THE NATION'S HUMAN CAPITAL 1 (1995) (Message From The Chair) ("GLASS CEILING COMM'N REPORT"). Over the next 50 years, that percentage is projected to exceed the percentage of Caucasian work force entrants. See pp. 3-4, *supra*. Businesses also employ citizens of other nations to staff their global manufacturing and production operations. General Motors, for example, employs citizens of 53 different countries, many of whom are non-Caucasians.

The capacity of many businesses to recruit and retain talented labor — a critical resource — therefore increasingly will depend upon the sensitivity of their managers to interracial and multicultural issues. "Companies with strong records for developing and advancing minorities and women will find it easier to recruit [and retain] members of those groups." GLASS CEILING COMM'N REPORT, *supra*, at 4.

Indeed, companies that manage diversity well already are proving more successful in attracting and retaining top-quality workers. See Taylor H. Cox, Jr. & Stacy Blake, *Managing Cultural Diversity: Implications for Organizational Competitiveness*, 5 ACADEMY OF MANAGEMENT EXECUTIVE No. 3, at 45, 48-49 (1991). The need to make work environments more hospitable to non-Caucasian workers is apparent: at present, minorities in general experience higher turnover rates and levels of job dissatisfaction. See, *e.g.*, *id.* at 45, 46.

Managers' and employees' cross-cultural competence augments not only recruiting and retention of employees, but also work force creativity and productivity. The best ideas

and products are created by teams of people who can work together without prejudice or discomfort. Cf. Gareth Morgan, *Endangered Species: New Ideas*, 133 BUSINESS MONTH No. 4, at 75-77 (1989) (cooperation and conflict management are essential to innovation). The absence of such obstacles is of special import in the new work environments of cutting-edge businesses, which stress teamwork and the free movement of ideas between people. See, *e.g.*, WILLIAM G. LEE, MAVERICKS IN THE WORKPLACE: HARNESSING THE GENIUS OF AMERICAN WORKERS 4 (1998). General Motors, for example, strives for a "walls down" work environment to foster "idea flow" — an interactive process of creative brainstorming unhindered by titles and positions. Idea flow cannot be achieved across barriers of racial and cultural discomfort or among team members who are unable to accept diverse views.

A corporate management comprising individuals who have never before experienced the challenges of interracial and cross-cultural interactions that they will confront in the workplace poses great risks to efficiency and productivity. First, low-level unease between managers and employees of different races, ethnicities, and cultures may impede productivity and prevent the formation of the close working relationships that make a business "hum." Second, managers unskilled in considering diverse perspectives may fail to recognize excellent ideas when they come from unexpected sources. Third, a lack of exposure to persons of different races and ethnicities may result in economically inefficient, and improper, hiring and promotion decisions, influenced by false stereotypes rather than an objective assessment of true merit. Such decisions not only destroy morale, but deprive the business of the benefit of excellent workers' untapped potential. In a worst-case scenario, insensitivity to issues of race or ethnicity could produce intense conflict or render a business vulnerable to costly and disruptive discrimination lawsuits.

In sum, the graduates whom businesses recruit from top academic institutions, such as the University of Michigan, to serve as managers and professionals will shape the corporate cultures and reputations for diversity of those businesses in the years to come. Graduates who lack sensitivity to perspectives influenced by race and ethnicity will be ill-equipped to meet the fundamental challenge of attracting, retaining, and managing the human capital that businesses need to survive.

Forming and Maintaining Relationships With Global Business Partners. Expanding global presences also mean that businesses increasingly transact with potential commercial partners from diverse races and cultures. General Motors, for example, has business partners and subsidiaries in many different countries and is constantly seeking to expand its operations and sales throughout the world. The company's global business objectives thus dictate that many of its managers and employees engage daily in transnational, cross-cultural, and interracial contacts. Such contacts occur at every level, from the business people to the engineers, who must work across national lines to develop and market the very best products.

Establishing trust across racial and cultural lines is a serious corporate challenge for all businesses that have international aspirations. Graduates from our Nation's elite academic institutions who have been immersed in cross-cultural learning environments will be better prepared to meet it.

2. *Diversity In Academic Institutions Augments The Skills — Cross-Cultural Competence And Complex Thinking — That Students Need To Help Lead Our Country's Economic Future*

Abundant research has verified Justice Powell's conclusion that racial and ethnic diversity in institutions of higher education assists students in developing the skills that,

as we have just explained, are so essential to their success in the business world: (1) understanding the views of persons from different cultures and (2) addressing issues from multiple perspectives.

Open-mindedness and complex thinking are skills best honed through exposure to multiple ideas and challenging debate in an educational environment. Academics attest, and researchers confirm, that racial and ethnic diversity enhances this process, elevating the level of discourse in institutions of higher education by exposing students to a broader range of perspectives. Students emerge from a diverse academic experience with greater tolerance and ability to interact with persons of other cultures, far less parochial views, and more highly developed cognitive abilities.[10]

We do not undertake to catalogue the abundant research establishing the causal relationship between academic diversity and development of these cognitive and social skills — a task that other amici, representing numerous associations of university educators, have performed. We note only that Judge Duggan had ample basis for his conclusion that "solid evidence" establishes that "educational benefits * * * flow from a racially and ethnically diverse student body." *Gratz*, 122 F. Supp.2d at 822.[11]

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[10] Contrary to petitioner's argument, the point that an education in a diverse setting results in "benefits accruing to students after they have graduated from college" (Gratz Brief at 41) does not "demonstrate that there is no principle that confines the interest to the education context" and thereby enable diversity to "become a justification for using race to treat people differently in many walks of life." *Id.* Rather, it simply means that diversity in education benefits students long after their four years spent on a college campus.

[11] Professor Patricia Gurin's research provides especially powerful empirical support for the proposition that students who "participated in interactions with diverse peers, were comfortable and prepared to live and work in a diverse society." Expert Report of Patricia Gurin, at 33 (Dec. 15, 1998) *in* Ct. App. Joint Appendix at 2316; see also Gary Orfield & Dean Whitla, *Diversity and Legal Education: Student Experiences in Leading Law Schools, in* DIVERSITY CHALLENGED, *supra*, at 143.

3. Institutions Of Higher Learning Are Ideally Equipped To Provide The Exposure To Diversity, Development Of Cross-Cultural Competence, And Critical Thinking Skills That Graduates Need To Thrive In The Business World

Businesses depend upon institutions of higher learning to teach students the cross-cultural competence and cognitive skills they will need to perform at a high level in the business world. Higher education is the best, and for many students the only, opportunity to acquire these skills.

Selective academic institutions offer a large percentage of white students their first and last opportunity for significant contact with persons of other races and cultures prior to entering the working world. See Expert Report of Thomas J. Sugrue, at 3, 22, 37-44 (Dec. 15, 1998) *in* Ct. App. Joint Appendix at 2522; Gary Orfield & Dean Whitla, *Diversity and Legal Education: Student Experiences in Leading Law Schools, in* DIVERSITY CHALLENGED, *supra*, at 154-158 & Tables 2-7 (50% of the white students at Harvard Law School and University of Michigan Law School had little or no interracial contact prior to entering college or law school). Despite our Nation's increasing racial diversity, historical patterns of *de facto* segregation in housing, and hence, also in primary and secondary education, persist. See Orfield & Whitla, *supra*, at 155-156. For many students, then, the college or university experience presents the first "opportunity to disrupt an insidious cycle of lifetime segregation." Expert Report of Patricia Gurin, at 33 (Dec. 15, 1998) *in* Ct. App. Joint Appendix at 2316.

It is also the best such opportunity. Of course, many businesses, including General Motors, can and do provide extensive diversity training to workers after their arrival in the work force. But these courses are designed to supplement, not substitute for, training and experiences most employees should have received earlier. Should the most selective institutions of higher education return to a state of *de facto* segregation — as research indicates most will do if the Court were to overrule *Bakke* and prohibit them from considering race in admissions decisions[12] — businesses will be ill-equipped to bridge the gap.

A diminution of diversity in institutions of higher education would mean that a huge percentage of their graduates would arrive in the workplace having grown up in racially and ethnically homogeneous neighborhoods and attended racially and ethnically homogeneous schools: environments that empirical studies show breed prejudice and stereotypes.[13] Having been "'surrounded only by the likes of themselves,'" such students are likely to hold highly parochial and limited perspectives. *Bakke*, 438 U.S. at 312 n.48 (opinion of Powell, J.) (quoting Bowen, *Admissions and the Relevance of Race*, *supra*, at 9). They may lack the open-mindedness of students who have had more interactions with persons of other races.

It would be exceedingly difficult for businesses to play catch-up — to teach college graduates basic social and cognitive skills and values they should have acquired prior to

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[12] See, *e.g.*, Expert Report of Derek Bok, at 5-6 (Dec. 15, 1998) *in* Ct. App. Joint Appendix at 2240 (absent consideration of race in admissions, the representation of blacks in the Nation's premier law schools would sink to a *de minimis* level — in one calculation, 0.4%).

[13] See, *e.g.*, Expert Report of Sugrue, at 44; cf. GORDON W. ALLPORT, THE NATURE OF PREJUDICE 271-272 (1954).

entry into the workplace. First, businesses lack the pedagogical resources, including faculty, of academic institutions to provide the same training in these arenas. Businesses are primarily commercial, not educational, entities, incapable of replicating the safe academic environments that foster the "robust exchange of ideas which discovers truth out of a multitude of tongues." *Keyishian*, 385 U.S. at 603 (internal quotation marks omitted). Second, research suggests that interracial and cross-cultural contacts diminish prejudice and promote greater understanding primarily when they occur among individuals of equal status. See, *e.g.*, Walter G. Stephan & John C. Brigham, *Intergroup Contact: Introduction*, 41 J. SOC. ISSUES No. 3, at 1, 2 (1985); Expert Report of Gurin, at 20. Only schools, not businesses, offer a forum for cross-cultural contact among a society of equals, free of hierarchy. Finally, students tend to exhibit greater openness to such lessons at earlier stages of their development. "Students come to universities at a critical stage, * * * a time during which they define themselves in relation to others and experiment with different social roles." Expert Report of Gurin, at 4.

Accordingly, universities, not businesses, "are [the] ideal institutions to foster" the skills and values necessary for participation in a heterogeneous society. See *id.* at 9 (emphasis omitted). See generally HARVARD UNIVERSITY, THE PRESIDENT'S REPORT 1993-1995, at 43. As two constitutional scholars recently observed: "If a far-flung democratic republic as diverse — and at times divided — as [modern] America is to survive and flourish, it must cultivate some common spaces where citizens from every corner of society can come together to learn how others live, how others think, how others feel. If not in public universities, where?" Akhil R. Amar & Neal K. Katyal, *Bakke's Fate*, 43 U.C.L.A. L. Rev. 1745, 1749 (1996).

In sum, institutions of higher learning have a compelling interest in selecting diverse student bodies: to enhance the

educational experiences of students of all races and to equip them with the skills they need to thrive and lead our Nation as citizens and in the new global marketplace.

II. ELIMINATION OF AFFIRMATIVE ACTION IN EDUCATIONAL INSTITUTIONS LIKELY WOULD DEPRIVE BUSINESSES OF WELL TRAINED MINORITY CANDIDATES WHO ARE ESSENTIAL TO OUR NATION'S ECONOMIC SUCCESS

Institutions of higher learning have a compelling interest in considering race and ethnicity in admission decisions, not only because diversity enhances the quality of education, but because diversity enhances the many enterprises students will undertake following graduation. Selective universities and colleges serve as training grounds for and gateways to the higher echelons of all realms of American society, including corporate America.

Businesses hire from selective academic institutions not only because they tend to select the students with greatest potential, but also because they tend to prepare their students well to perform in the top levels of the work force. Utilizing the highest quality faculty, most effective curricula, superior programs and facilities, and most powerful alumni and community contacts, these universities and colleges offer unparalleled training opportunities. Cf. *Sweatt*, 339 U.S. at 634. The graduating classes of these institutions therefore, to some extent, define the pool from which future leaders and managers of the business world will emerge.[14] Selective institutions of higher learning bear a special responsibility to make admissions decisions that will not merely reward the

[14] As such, it is no answer that minority "students who, because of nonpreferential policies, are not admitted to a more selective school will assuredly be admitted elsewhere." Ctr. for Equal Opportunity Brief at 28.

past academic performance of individual students, but will enhance our Nation's economic future.

To accomplish that goal, academic institutions must be permitted to continue to consider, as one factor among many in their selection decisions, the race and ethnicity of applicants. Absent such consideration, the evidence suggests that the number of minorities admitted to and graduating from these selective institutions will plummet. See p. 20 n.12, *supra*. Any reduction in diversity at these institutions accordingly would reduce the diversity of the pool of candidates from which businesses could select top corporate managers and professionals. That, in turn, threatens to deprive businesses of the manifold benefits of having a critical mass of people of color and persons of different ethnicities in their upper ranks and would strike a harmful blow to our Nation's economic well-being.

In this regard, it is notable that "[h]igher education, by making up for educational inequities at early stages in life, can be the ramp up to a level playing field — with no further affirmative action — for the rest of one's future." Amar & Katyal, *supra*, 43 U.C.L.A. L. Rev. at 1749. Indeed, as the United States recognizes, "[i]f undergraduate and graduate institutions are not open to all individuals and broadly inclusive to our diverse national community, then the top jobs * * * will be closed to some." United States Brief (Grutter) at 13. If courts prohibit institutions of higher learning from performing this function, businesses will find it more difficult to hire superbly trained minority candidates.

There can be little doubt that racial and ethnic diversity in the senior leadership of the corporate world is crucial to our Nation's economic prospects. In a country in which minorities will soon dominate the labor force, commensurate diversity in the upper ranks of management is increasingly important. A stratified work force, in which whites dominate the highest levels of the managerial corps and minorities

dominate the labor corps, may foment racial divisiveness. It also would be retrogressive, eliminating many of the productivity gains businesses have made through intensive efforts to eradicate discrimination and improve relations among workers of different races.

Instead of finding that the consideration of diversity leads to racial tension and stigmatization, as petitioner and amici argue (*e.g.*, Grutter Brief at 34-35; Ctr. for Equal Opportunity Brief at 17-19; Nat'l Ass'n of Scholars Brief (Gratz) at 23-24; W. Connerly Brief at 13-15), businesses have discovered just the opposite: valuing diversity has helped their bottom line. Abundant evidence suggests that heterogeneous work teams create better and more innovative products and ideas than homogeneous teams. Homogeneity often causes teams to suffer from lock-step "group think." See, *e.g.*, Charlan J. Nemeth, *Differential Contributions of Majority and Minority Influence*, 93 PSYCHOLOGICAL REVIEW No. 1, at 23-32 (1986); Sumita Raghuram & Raghu Garud, *The Vicious and Virtuous Facets of Workforce Diversity*, *in* SELECTED RESEARCH ON WORK TEAM DIVERSITY 155, 156, 160 (Marian N. Ruderman et al. eds., 1996); JOHN P. FERNANDEZ, THE DIVERSITY ADVANTAGE 284-285 (1993). The most innovative companies therefore deliberately establish heterogeneous teams in order to "'create a marketplace of ideas,' recognizing that a multiplicity of points of view need to be brought to bear on a problem." ROSABETH MOSS KANTER, THE CHANGE MASTERS: INNOVATIONS FOR PRODUCTIVITY IN THE AMERICAN CORPORATION 167 (1983).

In short, as GM President and CEO Jack Smith has said, "Having people of different ethnic, racial, and social backgrounds in our corporation has not slowed our pursuit of excellence — it has accelerated it." General Motors, *Workplace Diversity – The Competitive Advantage*, *at* http://www.gm.com/company/gmability/diversity/people/workforce.html (last visited Feb. 15, 2003). The chief executive officers of numerous Fortune 500 companies agree. As

Robert J. Eaton, then-Chairman and CEO of Chrysler Corporation, explained, "workforce diversity is a competitive advantage. Our success as a global community is as dependent on utilizing the wealth of backgrounds, skills, and opinions that a diverse workforce offers, as it is on raw materials, technology and processes." EXECUTIVE COUNCIL 1998, at 10.[15]

Empirical research buttresses the conclusion of these corporate executives and industry representatives that work force diversity is important to effective competition in today's market. The federal Glass Ceiling Commission, for instance, reported that "[i]ndependent research has shown that companies that go the extra mile in hiring and promoting minorities and women are more profitable." GLASS CEILING COMM'N REPORT, at 2. Other studies have reached similar conclusions. See, *e.g.*, Janine S. Hiller & Stephen P. Ferris, *Separating Myth From Reality: An Economic Analysis of*

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[15] See also *id.* at 34 ("'We see diversity in the background and talent of our associates as a competitive advantage and as a commitment that is a daily responsibility.'") (quoting M. Douglas Ivester, then-Chairman and CEO of The Coca Cola Company); Robert A. Rosenblatt, *PG&E Wins Federal Affirmative Action Award*, L.A. TIMES, Dec. 19, 1989, at D2 ("'We are convinced that this investment in equal opportunity pays high dividends.'") (quoting George A. Maneatis, then-President of Pacific Gas & Elec. Co.); Kenneth Labich, *Employees Must Reflect the Diverse World*, FORTUNE, Mar. 26, 1990, at 56 ("'Any business climate in which broadly different individuals may succeed will be a climate where the whole organization prospers.'") (quoting James R. Houghton, then-Chairman and CEO of Corning Inc.); Janine S. Hiller & Stephen P. Ferris, *Separating Myth From Reality: An Economic Analysis of Voluntary Affirmative Action Programs*, 23 MEMPHIS ST. U. L. REV. 773, 777 & n.20 (1993) (observing that it is now commonly accepted in business circles that diversity is "good for business").

Voluntary Affirmative Action Programs, 23 MEMPHIS ST. U. L. REV. 773, 794-795 (1993).

General Motors strongly believes that the future of American businesses depends upon the availability of a diverse group of well-trained graduates. Only with the contributions of the best and brightest of every race, ethnicity, and culture can American businesses continue to create the world's most innovative products, manage the world's most productive work forces, and expand their operations across the globe. For the sake of the Nation's collective economic future, institutions of higher learning must be permitted to continue to achieve the diversity that enhances both the education of these individuals and the endeavors that they will undertake as graduates.

CONCLUSION

For the reasons stated, the Court should hold that the government has a compelling interest in achieving the educational benefits of diversity in higher education and that admissions parameters that are narrowly tailored to ensure a diverse, heterogeneous student body are permissible under the Constitution.

Respectfully submitted.

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FEBRUARY 2003